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**OFFICE OF PETITIONS**

In re Application of	:	
Peter L. Collins et al.	:	
Application No. 10/774,341	:	
Filed: February 6, 2004	:	
Attorney Docket Number: 2303-28-5	:	DECISION ON TWO PETITIONS
Title: PRODUCTION OF ATTENUATED	:	UNDER 37 C.F.R. §§1.181 AND
RESPIRATORY SYNCYTIAL VIRUS	:	1.137(B)
VACCINES INVOLVING MODIFICATION	:	
OF M2 ORF2	:	

This is a decision on the two petitions concurrently filed on March 31, 2005 under 37 C.F.R. §1.181, requesting that the holding of abandonment in the above-identified application be withdrawn, and alternatively requesting to revive the above-identified application pursuant to 37 C.F.R. §1.137(b)<sup>1</sup>.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (notice), mailed August 13, 2004, which indicated that the basic filing fee, an oath or declaration, the surcharge associated with the late submission of the same, a computer readable form copy of the sequence listing, an initial paper copy or compact disc copy of the same, and a statement pertaining to its contents were required, and set a shortened statutory period for reply of two (2) months. Petitioner did not

1 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

submit any of these requirements. Instead, on December 13, 2004, he submitted a continuation application along with a two-month extension of time. Accordingly, the above-identified application became abandoned on December 14, 2004.

The petition under 37 C.F.R. §1.181:

With the present petition, Petitioner contends that the application is not in fact abandoned due to the timely filing of a continuation application.

This submission was properly treated as a continuation application and assigned a serial number of 11/011,502.

Petitioner failed to include a copy of the notice with his submission of December 13, 200, in that he did not include any of the requirements set forth in the notice. Petitioner never requested that the filing fee be charged, but rather filed a continuation application instead. As such, the Office had no way of knowing that Petitioner wanted the filing fee for the present application to be charged to his deposit account.

37 C.F.R. §1.78(a)(1)(ii) is applicable to the current situation. This portion of the C.F.R. sets forth:

(1) A nonprovisional application or international application designating the United States of America may claim an invention disclosed in one or more prior-filed copending nonprovisional applications or international applications designating the United States of America. In order for an application to claim the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America, each prior-filed application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior-filed application must be:

(ii) Entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and have paid therein the basic filing fee set forth in § 1.16 within the pendency of the application.

As such, in order for 11/011,502 to be able to claim the benefit of 10/774,341, the filing fee for the latter must have been submitted. Without the payment of the filing fee for the parent application, the continuation application cannot claim benefit to the parent, per this section of the CFR.

The petition under 37 C.F.R. §1.181 is **DISMISSED**.

The petition under 37 C.F.R. §1.137(b):

Petitioner has included the proper statement of unintentional delay. Both the petition fee and the filing fee for the present application have been charged to his Deposit Account, as authorized in the petition.

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.

Since this application is being revived for purposes of continuity only and since continuity has been established by this decision reviving the application, 10/774,341 is again abandoned in favor of continuing Application No. 11/011,502.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.

A handwritten signature in black ink, appearing to read "Paul Shanowski", written in a cursive style.

**Paul Shanowski**  
**Senior Attorney**  
**Office of Petitions**  
**United States Patent and Trademark Office**